

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Bradley Turner, #163641,)	C.A. No. 9:18-2478-HMH-BM
)	
Plaintiff,)	
)	
vs.)	OPINION & ORDER
)	
Chuck Wright, Major Freeman,)	
Jane Does and John Does,)	
)	
Defendants.)	

This matter is before the court for sua sponte reconsideration. The Plaintiff, Bradley Turner (“Turner”), a federal detainee proceeding pro se, filed a complaint in this action on September 7, 2018, alleging § 1983 claims. On October 3, 2018, United States Magistrate Judge Bristow Marchant issued a “proper form” order requiring that Turner bring the case into form by October 24, 2018. The court did not receive the necessary information and paperwork to bring the case into proper form by the deadline. Therefore, Magistrate Judge Marchant issued a Report and Recommendation on October 31, 2018, recommending that this case be dismissed for failure to prosecute. In addition, having received no objections, the court adopted the Report and dismissed the case on November 26, 2018. Turner filed an appeal on December 6, 2018.

Subsequently, on December 26, 2018, the Clerk’s Office in Charleston, South Carolina received a letter from Aaron Shah Khan (“Khan”), a pro se plaintiff in an unrelated civil action, 9:18-02180-HMH-BM, indicating that he had erroneously received Turner’s documents in a mailing from the Clerk’s Office. Turner’s proper form documentation is date stamped

December 14, 2018, by the Clerk's Office. Thus, Turner's documents were received by the Clerk's Office and it appears that instead of being properly filed in his case, the documents were inadvertently included in a mailing to Khan on December 14, 2018.

The proper form documents were due on October 24, 2018. It is unclear when Turner's documents were actually mailed to the Clerk's Office. The letter accompanying Turner's documents and the documents are dated October 7, 2018. Further, the envelope is postmarked December 12, 2018. However, there is an unknown red date stamp of November 5, 2018, on Turner's envelope.

Based on the foregoing and out of abundance of caution, there is evidence that Turner submitted his proper form documents prior to entry of the court's November 26, 2018 order. Further, through no fault of his own, the filing of Turner's documents was delayed in part due to Clerk's Office error. Thus, it appears that Turner was actively prosecuting this action and the court declines to dismiss this case for failure to prosecute.

It is therefore

ORDERED that the previous order of November 26, 2018, adopting the Report and Recommendation is vacated. It is further

ORDERED that this matter is remanded to the magistrate judge for further consideration.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
January 7, 2019